

# CELL PHONE STIPEND AGREEMENT

## Background

Southwest Texas Junior College recognizes that the performance of certain job responsibilities may be enhanced by or may require the use of a cellular (cell) phone or a Smartphone. The IRS considers these devices to be "listed property." As such, IRS regulations (IRS Section 274(d)4) require detailed record keeping including (a) the amount of the expense, (b) the time and place of the call, and (c) the business purpose for the call. The IRS can declare that all undocumented use of a cell phone is personal and should be taxed as wages, even if the majority of the calls are for business purposes.

In order to comply with IRS rules regarding the taxable nature of cell phone usage by employees, as of \_\_\_\_\_(date), the College will no longer provide cell phone service to individual employees. Instead, the College will begin issuing a cell phone stipend for those employees who hold positions where the duties of that position require the use of a cell phone. The benefits of such an approach include: 1) a call log is not required; 2) monthly reporting is not required; 3) a single phone may be used for both personal and business purposes.

## Policy

Employees who hold positions that include the need for a cell phone (see eligibility criteria below) may receive a cell phone stipend to compensate for business-related costs incurred when using their individually-owned cell phones. The College will not own cell phones for the use of individual employees except in limited situations that require specific equipment or similar technology to perform College functions (e.g. public safety, physical plant, etc.).

## Eligibility

Employees whose job duties include the frequent need for a cell phone may receive extra compensation, in the form of a monthly cell phone stipend, to cover business-related costs. An employee is eligible for a stipend if at least one of the following criteria is met:

- The job function of the employee requires considerable time outside of his/her assigned office or work area and it is important to the College that s/he is accessible during those times;
- The job function of the employee requires him/her to be accessible outside of scheduled or normal working hours;
- The job function of the employee requires him/her to have wireless data and internet access; and/or
- The employee is designated as a "first responder" to emergencies on campus.

## Stipend Plan

If an employee meets the eligibility requirements for a cell phone, as outlined above, a stipend may be requested using the *Cell Phone Stipend Agreement*. The request may be made any time during the fiscal year.

Once approved, the stipend amount will be added to the employee's regular pay. As per IRS guidelines, any amount added for cell phone equipment or for cell phone service will be identified as a non-taxable fringe benefit.

*This stipend does not constitute an increase to base pay, and will not be included in the calculation of percentage increases to base pay due to annual raises, job upgrades, bonuses, benefits based on a percentage of salary, etc.*

The stipend will be paid as a flat rate of \$40 per month. Southwest Texas Junior College will pay only the agreed upon amount, even if monthly costs exceed the stipend.

The stipend allowance is neither permanent nor guaranteed. The College reserves the right to remove a participant from this plan and/or cancel the plan if there is insufficient budget to meet the plan costs.

### **Oversight, Approval, & Funding**

Individual departments and department heads are responsible for identifying employees who hold positions that include the need for a cell phone. Each department is strongly encouraged to review whether a cellular device is necessary, and to select alternative means of communication -e.g., landlines, pagers, and mobile radios - when such alternatives would provide adequate and less costly service to the College.

The department head is responsible for overseeing employee cell phone needs and assessing each employee's continued need of a cell phone for business purposes. The need for a cell phone stipend should be reviewed annually, to determine if existing cell phone stipends should be continued as-is, changed, or discontinued.

Stipends are funded by the department submitting the request.

### **Employee Rights & Responsibilities**

The employee is responsible for purchasing a cell phone and establishing a service contract with the cell phone service provider of his/her choice. The cell phone contract is in the name of the employee, who is solely responsible for all payments to the service provider. The employee purchases cellular phone service and equipment; determines plan choices, service levels, calling areas, service and phone features; and accepts termination clauses and payment terms. The employee may use the phone for both business and personal purposes, as needed. The employee may, at his or her own expense, add extra services or equipment features, as desired. If there are problems with service, the staff member is expected to work directly with the carrier for resolution. An employee receiving a cell phone stipend must be able to show, if requested by his/her supervisor, a copy of the monthly access plan charges and business related use to determine if the amount of College compensation is appropriate. If the employee terminates the wireless contract at any point, s/he must notify his/her supervisor within 5 business days to terminate the stipend.

Southwest Texas Junior College does not accept any liability for claims, charges or disputes between the service provider and the employee. Use of the phone in any manner contrary to local, state, or federal laws will constitute misuse, and will result in immediate termination of the cell phone stipend. Cell phones covered by this policy are used in part to conduct College business and/or to create, receive, send, or store College data and/or education records of students. As a result, information contained on devices covered by this policy are also subject to Federal and State data maintenance and protection laws (e.g., FERPA, records retention requirements), as well as all College policies, including those pertaining to data security, acceptable computing use, and email. An employee receiving a College cell phone stipend must comply with Federal, State, and College requirements, and assist the College in providing access to information about or contained on the cell phone covered by this policy in response to requests for such data or information by third parties as required by Federal and/or State law. Any cell phone that has data capabilities must be secured based on current security standards including

password protection and encryption. If a cell phone with data capabilities is stolen or missing, it must be reported to the employee's supervisor and the wireless device service provider as soon as possible. Employees are expected to delete all College data from the cell phone when their employment with the College is severed, except when required to maintain that data in compliance with a litigation hold notice.

### **College Owned Cell Phones**

The College may own and retain a limited number of cell phones for emergency, disaster recovery, and/or other business purposes, including:

- Shared department cell phone: Arrangement involving multiple individuals sharing one cell phone that does not leave the campus and is turned in by each employee at the end of his/her shift.
- On-call department cell phone: Used for business purposes only, this arrangement involves multiple individuals that take turns being on call and share one phone.

Requests for College-owned cell phones must be approved by the department's Vice-President. Departments requesting a College-owned phone should consider whether there are other options that might meet their needs, and must demonstrate how a College-owned cell phone is the only/best solution. All costs associated with the College-owned phone, including equipment and monthly service, will be charged back to the requesting department.

Employee use of College-owned cell phones is limited to official College business only, and no personal Use of College-owned cell phones is allowed.

### **Cancellation**

Any stipend agreement will be immediately cancelled if an employee receiving a cell phone stipend terminates employment with the College. Any such stipend will also be cancelled if an employee changes job positions. In case of a change in job positions, a new *Cell Phone Stipend Form* must be submitted to the Business Office to establish the continued business need for a cell phone.

If, prior to the end of the cell phone contract, a personal decision by the employee, employee misconduct, or misuse of the phone results in the need to end or change the cell phone contract, the employee will bear the cost of any fees associated with that change or cancellation. EXAMPLE: The employee quits, and no longer wants to retain the current cell phone contract for personal purposes. If, prior to the end of the cell phone contract period, a department decision (unrelated to employee misconduct) results in the need to end or change the cell phone contract, the department will bear the cost of any fees associated with that change or cancellation. The original billing statement indicating the early termination charge billed must be submitted in order to be reimbursed in these circumstances. EXAMPLE: The employee's supervisor has changed the employee's duties, and the stipend is no longer needed. The employee does not want to retain the current cell phone contract for personal purposes.